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WHEN RECORDED, RETURN TO:

Zions Bancorporation, N.A.
dba Zions First National Bank
Enterprise Loan Operations
2200 South 3270 West
West Valley City, Utah 84119

**CONSTRUCTION TRUST DEED,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. ZFN-3322462

This Construction Trust Deed, Security Agreement and Fixture Filing is made and executed this 15 day of November, 2021 (the "Closing Date"), by **Fieldstone DB Cottage, LLC**, a Utah Limited Liability Company, ("Trustor") to Zions Bancorporation, N.A. dba Zions First National Bank ("Trustee"), in favor of Zions Bancorporation, N.A. dba Zions First National Bank ("Beneficiary").

Beneficiary is making an advance of funds to Fieldstone Construction and Management Services, Inc. (collectively the "Borrower"), in the original principal amount of **Fifteen Million Dollars (\$15,000,000.00)** pursuant to a Promissory Note dated **February 25, 2021** (the "Note"). The Note is part of, and is advanced under, a Line of Credit Loan Agreement between Borrower and Beneficiary dated **February 25, 2021** (the "Credit Agreement"). This Trust Deed, along with each and every other trust deed executed in connection with the Credit Agreement, secures all Loans originated to Borrower under the Credit Agreement, and is given and accepted under the following terms.

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 GRANT AND CONVEYANCE

1.1 **Real Property.** Trustor hereby assigns, grants, bargains, sells, conveys, warrants, and transfers to Trustee in trust, for the benefit of Beneficiary, with power of sale, and right of entry and possession, the following described real property (the "Real Property"):

1.1.1 **Real Property.** All of Trustor's right, title, interest and estate in and to the real property described in **Exhibit "A"**, attached hereto and incorporated herein by reference ("Property").

1.1.2 **Improvements.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all buildings, improvements, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments now or hereafter constructed upon, and all renewals and replacements of, any of the foregoing, which are now or

hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property (the "Improvements").

1.1.3 Tenements, Hereditaments. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all of the tenements, hereditaments, rights, privileges, and appurtenances belonging, relating, or in any way appertaining to any of the Property or the Improvements, or any portion of the Property or the Improvements, or which shall hereafter in any way belong, relate, or in any way appertain thereto, whether now owned or hereafter acquired, and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims, and demands of every nature whatsoever, at law or in equity, which Trustor may have or may hereafter acquire in and to the Property, the Improvements, or any portion thereof.

1.2 Tangible Personal Property. Trustor hereby assigns and grants to Beneficiary a security interest in the following described property (collectively the "Personalty"), whether now or hereafter existing, and in which Trustor now has or hereafter obtains any right, title, estate or interest, but only to the extent of Trustor's ownership interest therein, together with all additions and accessions thereto and all rents and proceeds thereof:

1.2.1 Leases, Rents. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all leases and subleases of all or any portion of the Property or the Improvements now or hereafter existing or entered into, and all lease agreements and documents evidencing the same; and all right, title and interest of Trustor thereunder, including without limitation, all rents, sub-rents and other amounts received for use of all or any portion of the Property or the Improvements, including without limitation, any and all rental agreements and arrangements of any kind now owned or hereafter acquired, and all proceeds from such leases, rents, sub-rents, issues, royalties, security deposits, income and profits of and from the Property, the Project, the Improvements, or any portion thereof.

1.2.2 Tangible. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to (the following as defined in the Utah Uniform Commercial Code): (a) All goods, inventory, specifically including, without limitation, materials, furnishings and supplies, whether stored on or off the Property, delivered to the Property for incorporation or use in any construction, renovation, operation or maintenance of the Property or the Improvements, supplies, furnishings, construction materials, equipment, vehicles, machinery, appliances, including attached and unattached appliances, and other tangible personal property and fixtures located in or upon the Property or the Improvements and used or useable in connection therewith, or to be used in the construction, reconstruction, remodeling, or repair of any of the Improvements now or hereafter located upon the Property; (b) All furniture, fixtures and equipment as equipment, wherever located, and all related right, title and interest of Trustor, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein; (c) All contracts, including architectural, engineering, development, construction

and construction cost guarantee contracts or bonds entered into in connection with the improvement of the Property, all plans and specifications, building or use permits, subdivision plats and any related subdivision development requirements and specifications prepared by the engineer and architect thereunder, relating to the construction, development, ownership or maintenance of the Property or the Improvements; (d) All engineering reports, surveys, soil reports and other documents relating to the Property; (e) All modifications, parts, accessories, and accessions to each and all of the foregoing and all renewals and replacements thereof; (f) General intangibles, deposit accounts, instruments and (g) All proceeds of each of the foregoing.

1.2.3 Permits, Names, Rights. All right, title interest and estate of Trustor, now owned or hereafter acquired, in and to: (a) All permits, franchises, privileges, grants, consents, licenses, authorizations, and approvals heretofore or hereafter granted by the United States, by the State of Utah or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities, to or for the benefit of Trustor and utilized in connection with the Property and the Improvements thereon or to be constructed thereon, to the extent the same are transferable and subject to all terms, covenants and conditions thereof and to applicable law; (b) All names under or by which the Property or any of the Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all service marks, trademarks and goodwill in any way relating to Trustor's ownership and operation of the Property; (c) All legal or equitable claims, judgments, and awards (including insurance, eminent domain, purchase in lieu, etc.) now or hereafter accruing to the benefit of Trustor respecting the Property and the Improvements; (d) All shares of stock, member interests, partnership interests, or other evidence of ownership of any part of the Property or the Improvements that is owned by Trustor in common with others; (e) All documents and rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and (f) All amendments, modifications, additions, accessions, substitutions, replacements and renewals to any of the foregoing and all proceeds of the foregoing, whether voluntary or involuntary, including without limitation, insurance proceeds.

1.2.4 Loan Proceeds. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all proceeds of the Loan made by Beneficiary to Borrower for construction of the Improvements which proceeds are held by Beneficiary, whether or not disbursed, and all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of the Improvements to secure any and all of Trustor's and Borrower's obligations to Beneficiary.

1.3 Trust Estate. The Real Property and Personalty are sometimes hereinafter collectively referred to as the "Trust Estate".

1.4 Security Agreement. This Trust Deed constitutes a Security Agreement with respect to the Personalty, and Beneficiary shall have all of the rights and remedies of a secured party under the Loan Documents and the Utah Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor and Beneficiary acknowledge their mutual intent that all security interests contemplated herein are given as a contemporaneous exchange for new

value to Trustor, regardless of when advances to Trustor are actually made or when the Trust Estate is acquired

1.5 **Fixture Filing.** This Trust Deed constitutes a fixture filing pursuant to Article 9 of the Utah Uniform Commercial Code, Section 70A-9a-502, Utah Code Annotated, as such Utah Uniform Commercial Code is amended or recodified from time to time, Section 70A-9a-101, et. seq. The addresses of the secured party (Beneficiary) and the debtor (Trustor) are set forth in Article 11 of this Trust Deed. This Trust Deed is to be recorded in the real estate records in the County Recorder's office of the county in which the Real Property is located. Trustor is the record owner of the Real Property.

ARTICLE 2 OBLIGATIONS SECURED

2.1 **Obligations.** This Trust Deed is given for the purpose of securing the following obligations (collectively the "Obligations") of Trustor and/or Borrower:

2.1.1 **Note.** The payment and performance of each and every agreement and obligation under the Note (the definition of which includes all renewals, extension, modifications, and replacements thereof), including without limitation, the payment of principal and interest under the Note. Notwithstanding anything in this Trust Deed, none of the Real Property pledged as Collateral for the Loan secures payment and performance under the Environmental Indemnity or the Continuing Guaranty.

2.1.2 **Revolving Line of Credit.** The payment and performance of each and every agreement and obligation under the Loan Documents, including without limitation, the repayment of any amounts drawn under the Line of Credit and all expenses incurred by Beneficiary in connection with any draws.

2.1.3 **Advances by Trustee or Beneficiary.** The payment of all sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Trust Deed, the Loan Agreement, or any other Loan Document, together with interest thereon as provided in this Trust Deed.

2.1.4 **Extensions, Etc.** The payment and performance of any extensions of, renewals of, modifications of, or additional advances under the Note, or any of the obligations evidenced by the Note, regardless of the extent of or the subject matter of any such extension, renewal, modification or additional advance.

2.1.5 **Other Obligations.** The payment and performance of any other note or obligation reciting that it is secured by this Trust Deed. Trustor expressly acknowledges its mutual intent with Beneficiary that the security interest created by this Trust Deed secures any and all present and future debts, obligations, and liabilities of Borrower to Beneficiary without any limitation whatsoever.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 **Payment and Performance.** Except as otherwise provided in this Trust Deed, Borrower shall pay to Beneficiary all amounts secured by this Trust Deed as they become due, and Trustor and Borrower shall strictly and in a timely manner perform all of Trustor's and/or Borrower's Obligations under the Note, this Trust Deed, the Credit Agreement and Loan Documents.

3.2 **Trustor Representations.** Trustor is and shall remain a limited liability company duly organized and validly existing under the laws of the State of Utah and is and shall remain at all times during the time this Trust Deed secures the Loan, duly qualified to transact business in the State of Utah. Execution and delivery of this Trust Deed or any other Security Document has been duly authorized by all necessary acts and resolutions.

3.3 **Property.** Trustor represents and warrants to Beneficiary as follows: (a) Trustor is the owner of fee simple marketable title in and to the Real Property; (b) Trustor has full right, power, and authority to execute and deliver this Trust Deed to Beneficiary; (c) Trustor shall defend title to the Property and the Improvements against all claims and demands whatsoever; (d) with the exception of such exceptions to title as are identified in the Credit Agreement as Permitted Encumbrances, if any, (the "Permitted Encumbrances"), the lien created by this Trust Deed upon the Property and the Improvements is a good and valid first lien, free and clear of all liens, claims, restrictions, encumbrances, encroachments, exceptions, and interests whatsoever in favor of any third party.

3.4 **Hazardous Material.** No Hazardous Materials have been stored, or improperly used, disposed of, discarded, dumped, or abandoned by any person or entity on, in or under the Property or the Improvements in violation of any Environmental Laws. Trustor has complied with all applicable federal, state and local laws, rules, ordinances and regulations relating to the storage, transportation, and disposal of Hazardous Materials on, in or under the Property or the Improvements.

3.5 **Personalty.** Trustor further represents and warrants to Beneficiary as follows: (a) Trustor is the owner, or upon acquisition thereof, will be the owner of the Personalty; (b) The Personalty is, or upon acquisition thereof will be free and clear of all liens, claims, encumbrances, restrictions, charges, and security interests in favor of any third party except for the Permitted Encumbrances; and (c) The Personalty will be located in the State of Utah, and, will not be removed without the prior written consent of Beneficiary.

3.6 **Survival of Representations and Warranties.** All representations, warranties, and agreements made by Trustor and Borrower in this Trust Deed shall survive the execution and delivery of this Trust Deed, shall be continuing in nature, and shall remain in full force and effect until such time as all Obligations of Trustor and Borrower shall be repaid in full.

ARTICLE 4 CONSTRUCTION AND MAINTENANCE OF THE TRUST ESTATE

4.1 **Construction Loan Mortgage.** This Trust Deed constitutes a “construction mortgage” within the meaning of Section 70A-9a-334(8), Utah Code Annotated. The proceeds of the Loan secured by this Trust Deed are to be used by Borrower for the purpose of acquiring title to the Property and/or funding the construction, renovation, and remodeling of certain Improvements on the Property and are to be disbursed in accordance with the provisions of the Credit Agreement.

4.2 **Construction.** To protect the security of this Trust Deed, Trustor and Borrower shall commence promptly and pursue with reasonable diligence to completion, the construction of the Improvements on the Property, all in good and workmanlike manner, and in accordance with the provisions of the Credit Agreement.

4.3 **Maintenance.** Trustor shall do each of the following: (a) maintain the Property at all times in good condition and repair; (b) not commit any waste of the Property, or remove, damage, demolish, or structurally alter any of the Improvements; (c) except to the extent that insurance proceeds are applied by Beneficiary to the satisfaction of the Obligations in accordance with this Trust Deed, restore promptly and in good and workmanlike manner any of the Improvements or any portion thereof, which may for any reason be damaged or destroyed; (d) comply at all times with all laws, ordinances, regulations, covenants, and restrictions in any manner affecting the Property; (e) not commit or permit any act upon the Property in violation of law; and (f) do all acts which by reason of the character or use of the Property may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

ARTICLE 5 INSURANCE

5.1 **Insurance.** Trustor shall secure and cause to be maintained in force on the Property and in connection with the construction of the Improvements (a) builder's risk insurance; (b) multi-peril property insurance; (c) public liability insurance; (d) worker's compensation insurance; (e) flood insurance (if any part of Property is located within an area designated by the Department of Housing and Urban Development as a flood hazard area); and (f) such other insurance as may be required by the Credit Agreement or by law. All such insurance policies must cover all risks required to be covered by Beneficiary, comply with any requirements set forth in the Credit Agreement and be approved by Beneficiary as to amount, form, terms, deductibles and insurer. All such policies of insurance shall name Beneficiary as an additional insured or loss payee, as appropriate. All such insurance policies shall contain a provision that such policies will not be cancelled or amended, including any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary.

5.2 **Notice of Casualty.** In the event of loss or damage to the Trust Estate or any portion thereof, Trustor and/or Borrower shall immediately notify Beneficiary.

5.3 **Proceeds of Insurance.** All proceeds of insurance on the Trust Estate, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or

taking of all or any part of the Trust Estate, or for any damage or injury to it or for any loss or diminution in value, are hereby assigned to and shall be paid to Beneficiary, except as otherwise provided in the Credit Agreement. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries.

5.4 **Disposition of Policies on Foreclosure.** In the event Beneficiary exercises the power of sale or foreclosure provisions of this Trust Deed or makes any other transfer of title or assignment in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to the policies of insurance required by this Trust Deed shall inure to the benefit of and pass to the transferee of the interests conveyed under this Trust Deed or to the purchaser at the foreclosure sale, as the case may be.

ARTICLE 6 INDEMNIFICATION AND OFF-SET

6.1 **General Indemnification.** Trustor and Borrower shall indemnify and hold Beneficiary harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to, the Note, the Credit Agreement, this Trust Deed, any other Loan Documents evidencing or securing the Note, or the construction, use or occupation of the Property, or any part thereof, except for claims based upon Beneficiary's gross negligence or willful misconduct. If Beneficiary commences any action against Trustor and/or Borrower to enforce any of the terms, covenants or conditions of this Trust Deed, Beneficiary may employ legal counsel to protect Beneficiary's rights hereunder and Trustor and/or Borrower shall pay Beneficiary reasonable legal fees and costs actually incurred by Beneficiary. The right to such fees and costs shall be deemed to have accrued and to be enforceable upon employment of legal counsel whether or not formal legal action is actually commenced against Trustor and/or Borrower.

6.1.2 **Mechanics Liens.** Trustor and Borrower shall indemnify, defend and hold Beneficiary harmless from any and all liability or expense arising from any claims for work, labor, or material furnished in connection with or arising from the construction of any building, fixture or improvements on or related to the Property, including reasonable attorneys fees and costs.

6.1.3 **Hazardous Materials.** Trustor and Borrower hereby agrees to indemnify, hold harmless and defend (by counsel of Beneficiary's choice) Beneficiary, its directors, officers, employees, agent, successors and assigns from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of (a) the presence on or under the Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under or from the Property, or (b) any activity carried on or undertaken on or off the Property, whether prior to or during the term of the Loan, and whether by Trustor and/or Borrower or any predecessor in title or any employees, agents, contractors or subcontractors of Trustor and/or Borrower or any predecessor in title, or any third persons at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage,

decontamination, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Property. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. Trustor and Borrower hereby acknowledges and agrees that, notwithstanding any other provision of this Trust Deed or any of the other Loan Documents to the contrary, the obligations of Trustor and Borrower under this Section shall be unlimited personal obligations of Trustor and Borrower and shall survive any foreclosure under this Trust Deed, any transfer in lieu thereof, and any satisfaction of the obligations of Trustor and Borrower in connection with the Loan. Trustor and Borrower acknowledge that Beneficiary's appraisal of the Property is such that Beneficiary would not extend the Loan but for the personal liability undertaken by Trustor and Borrower for the obligations under this Section.

6.2 **Off-Set.** All sums payable by Borrower under the Note, this Trust Deed or otherwise in connection with the Credit Agreement, shall be paid without notices, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Trust Estate or any part thereof; (b) any destruction or prevention of or interference with any use of the Trust Estate or any part thereof; (c) any title defect or encumbrance or any eviction from the Trust Estate or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Trust Deed by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (e) any claim which Trustor and/or Borrower has or might have against Beneficiary; (f) the occurrence of an Event of Default or any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Trust Deed or of any other agreement with Trustor and/or Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

ARTICLE 7 TAXES AND IMPOSITIONS

7.1 **Payment.** Trustor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges, (including all utility charges, such as gas, electrical, water and sewer, etc), fines and impositions levied against or on account of the Trust Estate, and shall pay when due all claims for work done on or for services rendered or material furnished to the Trust Estate. Trustor shall maintain the Trust Estate free of all liens having priority over or equal to the interest of Beneficiary under this Trust Deed, except for the lien of taxes and assessments not due and except as otherwise provided in this Trust Deed.

7.2 **Evidence of Payment.** Trustor shall upon demand furnish to Beneficiary satisfactory evidence of payment of the taxes and/or assessments and shall authorize the appropriate governmental office to deliver to Beneficiary at any time a written statement of the taxes and assessments against the Property.

7.3 **Right to Contest.** Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any tax, assessment, or claim by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such imposition at the time and in the manner provided in this Article unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object, and unless, at Beneficiary's option, (a) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate, or any part thereof, to satisfy such imposition prior to final determination of such proceedings; or (b) Trustor shall furnish a good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

ARTICLE 8 ADDITIONAL COVENANTS

8.1 **Evidence of Title.** Trustor shall deliver to, pay for and maintain with Beneficiary until the Obligations secured hereby are paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements or endorsements thereto.

8.2 **Defense of Title.** Subject to any exceptions specifically provided in this Trust Deed and the Permitted Encumbrances, Trustor warrants and will forever defend the title to the Trust Estate against the lawful claims of all persons. Trustor shall furnish to Beneficiary written notice of any litigation, default, lien, security interest or notice of default affecting the Trust Estate or title thereto, within ten (10) days of its initial receipt. In the event any action or proceeding is commenced that questions Trustor's title or interest of the Trustor or Beneficiary under this Trust Deed, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Beneficiary shall be entitled to participate in the proceeding and to be represented by counsel of Beneficiary's own choice, and Trustor will deliver, or cause to be delivered, to Beneficiary such instruments as Beneficiary may request from time to time to permit such participation.

8.3 **Reserves for Taxes and Insurance.** If any Event of Default shall occur and be continuing, and at Beneficiary's written request, Trustor shall deposit with Beneficiary in a non-interest bearing account, on the first day of each month, until the Note is paid in full, an amount equal to one-twelfth of the estimated annual aggregate taxes and insurance premiums. Providing Trustor has deposited sufficient funds, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds deposited. Should Trustor fail to deposit with Beneficiary sufficient amounts to fully pay such taxes and insurance premiums at least thirty (30) days before delinquency thereof, Beneficiary, at Beneficiary's election, but without any obligation to do so, may advance any amounts required to make up the deficiency, which advances, if any, shall be secured by this Trust Deed and shall bear interest and be repayable to Beneficiary in the manner specified in this Article.

8.4 Performance in Trustor's Stead. Should Trustor fail to make any payment or to do any act as provided in this Trust Deed, then Beneficiary or Trustee, but without any obligation to do so, and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Trust Estate for such purposes); (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior to the lien of this Trust Deed; and in exercising any such powers, incur any liability, or expend such reasonable amounts as Beneficiary may deem necessary therefor, including costs of evidence of title, employment of attorneys, and payment of reasonable attorney fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, shall bear interest and be repayable to Beneficiary in the manner specified in this Article. Trustor hereby waives and releases all claims or causes of action which may hereafter arise in favor of Trustor against Beneficiary by reason of any action taken by Beneficiary pursuant to any power or authority granted in this Section, except for Beneficiary's gross negligence or willful misconduct.

8.5 Repayment of Advances. Borrower shall immediately repay to Beneficiary any sums advanced by Beneficiary to maintain this Trust Deed as a prior, valid, and subsisting lien upon the Trust Estate, to preserve and protect Beneficiary's interest in this Trust Deed or to preserve, repair, or maintain the Trust Estate. All such advances shall be wholly optional on the part of Beneficiary, and Borrower's obligation to repay the same to Beneficiary, with interest thereon at the Note rate, shall be secured by the lien of this Trust Deed.

8.6 No Removal of Equipment or Fixtures. During the existence of this Trust Deed, Trustor shall not demolish or remove any Improvement, equipment, fixture, appliance, or Personalty from the Property, whether affixed or constructively affixed, or necessary for the operation or maintenance of any portion of the Trust Estate or Improvements, without the prior written consent of Beneficiary.

8.7 No Further Encumbrances. Trustor shall not cause, give, or otherwise allow any further encumbrance, pledge, mortgage, lease, hypothecation, lien, charge or claim upon the Property or any portion thereof without the written consent of Beneficiary, even though such encumbrance may be junior to the encumbrance created by this Trust Deed. Encumbrance of the Trust Estate contrary to the provisions of this Section shall constitute an Event of Default and at Beneficiary's option, the entire balance of principal and interest may be declared immediately due and payable, whether the same be created by Trustor or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect.

8.8 Due on Sale or Change of Control. Beneficiary has approved the Loan in material reliance upon the ownership and control of Trustor and the Trust Estate being the same as exists as of the Closing Date. It is acknowledged that any change in such ownership or control of (a) Trustor and/or (b) the Trust Estate (whether direct or indirect and regardless of the percentage interest conveyed) materially affects the financial risks anticipated by Beneficiary in extending

the Loan. Accordingly, other than as set forth herein or with the prior written consent of Beneficiary, it is and shall be a default under this Trust Deed, the Note and all of the Loan Documents for there to be any sale, transfer, or conveyance (collectively a “conveyance”) of any ownership interest or beneficial interest (regardless of the percentage interest conveyed or whether such interest is held as a partner, member, shareholder, beneficiary or otherwise) in: (i) Trustor or in the Trust Estate, or (ii) the operation, management, income, or profits of or fee title to the Trust Estate (whether held directly or indirectly), or (iii) any entity holding an ownership or beneficial or controlling interest in the Trustor or in the Trust Estate or (iv) any entity which through one or more intermediaries holds any ownership interest or beneficial interest, or controlling interest (direct or indirect) in the Trustor or the Trust Estate. “Control” hereunder means the ability of any person or entity to (1) direct the business operations or voting procedures for any entity, (2) cause the election, selection or the appointment of entity officers or managers, (3) cause the appointment of the management managing any entity or (4) cast a majority of the votes in any election or decision making process for any entity or (5) do any of the foregoing for any intermediary entity holding any ownership or beneficial or majority interest (whether direct or indirect) in the Trustor or in the Trust Estate.

If this Section 8.8 is breached, at the option of Beneficiary and without demand or notice, the full principal indebtedness of the Note and the other Obligations shall immediately become due and payable to Beneficiary. If Beneficiary elects to accelerate payment of the Principal Indebtedness because of a default under this Section 8.8, and if the Note or any other Loan Document contains a yield maintenance provision or a prepayment fee or prepayment premium, such acceleration shall be deemed to be a “prepayment” of the Principal Indebtedness under the Loan, whether or not the accelerated Loan balance is actually paid at the time of the subject conveyance. At the time the Principal Indebtedness is accelerated by Beneficiary, any prepayment fee or prepayment premium or yield maintenance fee set forth in the Note or other Loan Document shall be immediately due and payable to Beneficiary together with the balance of the unpaid Principal Indebtedness and all unpaid-accrued interest on the Loan.

The foregoing limitations in this Section 8.10 regarding conveyances and control (collectively a “transfer”) shall not apply to the following situations: (a) a transfer to which Beneficiary has given its prior written consent, (b) a transfer of Personalty due to obsolescence or ordinary wear and tear or fire or casualty and which is promptly replaced by Trustor with Personalty of equal or greater value, or (c) any transfer by Trustor leasing any portion of the Trust Estate to a tenant which is expressly permitted pursuant to (i) the Loan Agreement, and/or (ii) the Assignment of Leases, provided, however, Beneficiary holds a security interest in the lease and a subordination and non-disturbance agreement is granted in favor of Beneficiary on a Beneficiary approved form (unless the same is waived or not required pursuant to the Loan Agreement or the Assignment of Leases), or (d) where the transfer under applicable state or federal law governing Beneficiary and the Loan (pursuant to either statutory authority or judicial opinion) expressly prohibits the use, exercise or enforcement of said due-on-sale or change-of-control clause in the form set forth in this Section 8.8.

In the event of any conflict among the Loan Agreement or this Trust Deed and any security agreement governing the Collateral for the Loan, the following conflict resolution

provision shall apply: (i) if the Collateral is Personalty and does not constitute fixtures and is not part of the Trust Estate, such security agreement governing the Personalty shall control, unless Trustor and Beneficiary agree otherwise; or (ii) if the Collateral constitutes fixtures and is part of the Trust Estate, this Trust Deed shall control, unless Trustor and Beneficiary agree otherwise. In any event, the Loan Agreement shall control over any conflict between this Trust Deed or the security agreement governing the collateral.

8.9 Additional Collateral. If, at any time, the value of the Trust Estate, based on an appraisal acceptable to Beneficiary, is not sufficient to establish a ratio between the total amount of the Obligations then due and owing and the value of all of the Trust Estate equal to or less than one hundred percent (100%), Trustor shall provide Beneficiary with such additional collateral as is necessary so that the total value of all collateral securing Trustor's performance of the Obligations is sufficient to establish a ratio between the total amount of the Obligations then due and owing and the value of all such collateral of no more than one hundred percent (100%).

8.10 Inspections. Beneficiary, and its agents, representatives and employees, are authorized, but not obligated, to enter at any reasonable time upon the Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it or Trustor is authorized to perform under the terms of this Trust Deed or any other Loan Document.

8.11 Non-Occupancy. Trustor agrees that neither it nor any other person or entity shall occupy or use the Trust Estate or any of the Improvements prior to payment in full of the Note, or written authorization of Beneficiary. Usage of the Property for storage of other than construction related materials for the Property shall also be a violation of this covenant. This covenant shall not affect Trustor's right to construct the Improvements upon the Property. Based upon the nature of new construction and the negative impact occupancy has on completion, marketing, foreclosure, and value, Trustor agrees that violation of this covenant will result in harm to Beneficiary, which would not be compensable by monetary damages alone, and that Beneficiary shall be entitled to immediate injunctive relief to enforce this provision without declaration of an event of default or prior notification to Trustor. Such relief shall include an order (a) prohibiting occupancy or use of the Trust Estate and/or (b) directing removal of persons and effects from the Trust Estate. Beneficiary shall be entitled to such injunctive relief notwithstanding any other provision in the Credit Agreement or Loan Document and such relief shall be in addition to other available legal, contractual, and equitable remedies.

8.12 No Merger. There shall be no merger of the interest or estate created by this Trust Deed with any other interest or estate in the Trust Estate at any time held by or for benefit of Beneficiary in any capacity, without written consent of Beneficiary.

8.13 Unlawful Use, Medical Marijuana, Controlled Substances and Prohibited Activities. Trustor shall not use, occupy, or permit the use or occupancy of any of the Trust Estate by Trustor or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation, any law relating to the use, sale, possession, cultivation, manufacture, distribution or marketing of any controlled substances or other contraband (whether for

commercial, medical, or personal purposes), or any law relating to the medicinal use or distribution of marijuana (collectively, "Prohibited Activities"). Any lease, license, sublease or other agreement for use, occupancy or possession of any of the Trust Estate, including any amendment, modification, extension or renewal of the lease or its term (collectively a "lease") with any third person ("lessee") shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. Trustor shall upon demand provide Beneficiary with a written statement setting forth Trustor's compliance with this Section **Error! Reference source not found.** and stating whether any Prohibited Activities are or may be occurring in, on or around the Trust Estate. If Trustor becomes aware that any lessee is likely engaged in any Prohibited Activities, Trustor shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities. Trustor shall keep Beneficiary fully advised of its actions and plans to comply with this Section **Error! Reference source not found.** and to prevent Prohibited Activities.

This Section **Error! Reference source not found.** is a material consideration and inducement upon which Beneficiary relies in extending credit and other financial accommodations to Trustor. Failure by Trustor to comply with this Section **Error! Reference source not found.** shall constitute a material non-curable Event of Default. Notwithstanding anything in this Trust Deed, the Note or other Loan Documents regarding rights to cure Events of Default, Beneficiary is entitled upon breach of this Section **Error! Reference source not found.** to immediately exercise any and all remedies under this Trust Deed, the Note or other Loan Documents, and by law.

In addition and not by way of limitation, Trustor shall indemnify, defend and hold Beneficiary harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities at or on the Trust Estate, Prohibited Activities by Trustor or any lessee of the Trust Estate, or Trustor's breach, violation, or failure to enforce or comply with any of the covenants set forth in this Section **Error! Reference source not found.**. This indemnity includes, without limitation any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture of any of the Trust Estate (with or without compensation to Beneficiary, and whether or not any of the Trust Estate is taken free of or subject to Beneficiary's lien or security interest).

ARTICLE 9 CONDEMNATION AWARDS

9.1 **Proceedings.** Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking of the Trust Estate for public improvement and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Beneficiary shall be entitled at Beneficiary's option to commence, appear in, and prosecute in Beneficiary's own name any action or proceeding, and to make any compromise or settlement, in connection with such taking. Trustor shall execute and deliver to Beneficiary such instruments as Beneficiary may from time to time require to allow such participation.

9.2 **Application of Net Proceeds.** All compensation, awards, and other payments or relief therefor, are hereby assigned to Beneficiary and Trustor shall execute and deliver to Beneficiary such instruments as Beneficiary may from time to time require to perfect such

assignment. Beneficiary may at its election, require that all or any portion of the net proceeds of any award or payment be applied to the repair or restoration of the Trust Estate, or to be applied to any of the Obligations (whether or not then due) secured by this Trust Deed. Net proceeds of the award or payment shall mean the remaining balance after deducting all reasonable costs, expenses, and attorney's fees incurred by Trustor and/or Beneficiary in connection with such compensation (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment). Beneficiary shall have no obligation to apply proceeds of condemnation to restore or repair damage to the Trust Estate regardless of whether such taking has a significant adverse impact on the operation of the remaining portion of the Trust Estate.

ARTICLE 10 EVENTS OF DEFAULT AND REMEDIES

10.1 **Events of Default.** Fifteen (15) days after written notice from Beneficiary to Trustor and/or Borrower for monetary defaults and thirty (30) days after written notice from Beneficiary to Trustor and/or Borrower for non-monetary defaults, if such defaults are not cured within such periods, respectively, each of the following shall constitute an event of default under this Trust Deed (an "Event of Default"):

10.1.1 **Failure to Make Payment.** If Borrower shall fail to make any payment due and payable under the terms of the Note, this Trust Deed, the Credit Agreement, or any other Loan Document, including without limitation any promissory note or trust deed executed under the Credit Agreement.

10.1.2 **Non-Monetary Default.** Except as provided in Section 10.1.1 of this Trust Deed, failure to observe and perform any of the terms, covenants, or conditions to be observed or performed in the Note, this Trust Deed, the Credit Agreement, or any other Loan Document, including without limitation any promissory note or trust deed executed under the Credit Agreement.

10.1.3 **Credit Agreement.** Any Event of Default occurs under the Credit Agreement.

10.1.4 **False Representation.** Any material representation or warranty made or furnished by or on behalf of the Trustor and/or Borrower under the Note, this Trust Deed or any other Loan Document is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

10.1.5 **Death or Insolvency.** Commencement of any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Trustor or Trustor's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for Trustor or for all or any substantial part of Trustor's property or estate.

10.1.6 **Failure to Pay Debts.** Trustor fails to pay Trustor's debts as they become due, admits in writing Trustor's inability to pay Trustor's debts, or makes a general assignment for the benefit of creditors.

10.1.7 **Cross Default.** A default by Trustor under any other promissory note, deed of trust, security agreement, undertaking or arrangement between Trustor and Beneficiary now existing or entered into hereafter, including without limitation any other promissory note or trust deed executed under the Credit Agreement.

10.1.8 **Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor under the Credit Agreement or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of a Loan originated under the Credit Agreement. In the event of a death, Beneficiary at its option, may, but shall not be required to, permit Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to the Beneficiary, and, in doing so, cure any Event of Default.

10.2 **Acceleration Notice.** Time is of the essence hereof. Upon the occurrence of any Event of Default under this Trust Deed, at Beneficiary's option and in addition to any other remedy Beneficiary may have under the Note, Beneficiary may declare all sums secured hereby immediately due and payable and elect to have the Trust Estate sold in the manner provided herein. In the event Beneficiary elects to sell the Trust Estate, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Trust Estate to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Trust Estate is located. Beneficiary shall also deposit with Trustee the Note and all documents evidencing expenditures secured by this Trust Deed.

10.3 **Exercise of Power of Sale.** In exercising its rights and remedies, and in conformance with applicable law, Trustee or Beneficiary shall be free to sell all or any part of the Trust Estate, together or separately, in one sale or by separate sales. Trustee or Trustee's representative, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Trust Estate so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

10.3.1 **Proceeds of Sale.** Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees and costs; (b) cost of any evidence of title procured for such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the Note rate; (d) all sums secured by this Trust Deed, including interest and principal on the Note; and (e) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Trust Estate is located.

10.4 **Surrender of Possession.** Trustor shall surrender possession of the Trust Estate to the purchaser immediately after the sale of the Trust Estate as provided in this Trust Deed, in the event such possession has not previously been surrendered.

10.5 **UCC Remedies.** Beneficiary, with regard to all Personalty, conveyed to Trustee under this Trust Deed, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Utah Uniform Commercial Code, and any and all rights and remedies available to Beneficiary under any other applicable law. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble the Personalty and make it available to Beneficiary at a reasonably convenient place designated by Beneficiary. Beneficiary shall have the right to enter upon any premises where the Personalty or records pertaining to the Personalty may be and take possession of same. Beneficiary may sell, lease or otherwise dispose of any or all of the Personalty and, after deducting the reasonable costs and out-of-pocket expenses incurred by Beneficiary including, without limitation: (a) attorneys fees and legal expenses; (b) transportation and storage costs; (c) advertising of sale of the Personalty; (d) sale commissions and applicable tax; (e) costs for improving or repairing the Personalty; and (f) costs for preservation and protection of the Personalty; apply the remainder to pay, or to hold as a reserve against, the Obligations.

10.6 **Foreclosure as a Mortgage.** If an Event of Default occurs hereunder, Beneficiary shall have the option to foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys fees and costs in such amounts as shall be fixed by the court.

10.7 **Receiver.** If an Event of Default occurs, Beneficiary, as a matter of right and without regard to the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate and Trustor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

10.8 **No Remedy Exclusive.** No remedy conferred upon or reserved to Beneficiary under this Trust Deed shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Trust Deed, the Credit Agreement, or any other Loan Document, or now or hereafter existing at law or in equity or by statute.

10.9 **Rights upon Default.** In making the Loan, Beneficiary has relied upon the rights available to Beneficiary under this Trust Deed upon the occurrence of an Event of Default, including, but not limited to, the rights to accelerate the payment of any and all amounts secured by this Trust Deed; to sell the Trust Estate encumbered by this Trust Deed pursuant to the power of sale granted hereunder; the right to foreclose this Trust Deed as a mortgage; and the right to have a receiver appointed.

10.10 JURY TRIAL WAIVER, ARBITRATION, AND CLASS ACTION WAIVER

JURY TRIAL WAIVER; CLASS ACTION WAIVER. As permitted by applicable law, **the parties each waive their respective rights to a trial before a jury in connection with any Dispute** (as "Dispute" is hereinafter defined), and **Disputes shall be resolved by a judge sitting without a jury.** If a court determines that this provision is not enforceable for any reason and **at any time prior to trial of the Dispute, but not later than thirty (30) days after entry of the order determining** this provision is unenforceable, any party shall be entitled to move the court for an order compelling arbitration and staying or dismissing such litigation pending arbitration ("Arbitration Order"). If permitted by applicable law, **each party also waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.**

ARBITRATION. If a claim, dispute, or controversy arises between the parties with respect to this Agreement, related agreements, **or any other agreement or business relationship between any of the parties whether or not related to the subject matter of this Agreement** (all of the foregoing, a "Dispute"), and **only if** a jury trial waiver is not permitted by applicable law or ruling by a court, any of the parties may require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any party. **By agreeing to arbitrate a Dispute, the parties are giving up any right they may have to a jury trial, as well as other rights the parties would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.**

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, JAMS or National Arbitration Forum ("Administrator") as selected by the initiating party. If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters (i) relating to a deposit account, application for or denial of credit, enforcement of any of the obligations the parties have to each other, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party, (ii) based on or arising from an alleged tort, or (iii) involving employees, agents, affiliates, or assigns of a party. However, Disputes do not include the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. If a third party is a party to a Dispute, the parties each will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where Lender is headquartered.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment, (ii) will render a decision and any award applying applicable law, (iii) will give effect to any limitations period in determining any Dispute or defense, (iv)

shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable, (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases, and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000.00, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000.00, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within thirty (30) days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that the parties shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. This arbitration provision shall survive any termination, amendment, or expiration of this Agreement. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

RELIANCE. Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in this section.

ARTICLE 11 GENERAL PROVISIONS

11.1 **Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Trustor Fieldstone Construction and Management Services, Inc.
 12896 South Pony Express Road, Ste. 400
 Draper, Utah 84020-8335

Attention: C. Alan Arthur

Beneficiary Zions Bancorporation, N.A. dba Zions First National Bank
and Trustee: Real Estate Loan Department
One South Main Street, Suite 400
Salt Lake City, Utah 84133
Attn: Greg Ripplinger

Such addresses may be changed by notice to the other party given in the same manner provided herein.

11.2 **Severability**. If any provision of this Trust Deed shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Trust Deed or render the same invalid, inoperative, or unenforceable to any extent whatever.

11.3 **Amendments, Changes, and Modifications**. This Trust Deed may not be amended, changed, modified, altered, or terminated without the written consent of Beneficiary.

11.4 **Governing Law**. This Trust Deed shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah.

11.5 **Interpretation**. Whenever the context shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Trust Deed are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

11.6 **Binding Effect**. This Trust Deed shall be binding upon Trustor and Trustor's successors and assigns. This Trust Deed shall inure to the benefit of Beneficiary, and Beneficiary's successors and assigns, and the holders of any of the Obligations secured hereby.

11.7 **Waivers**. No delay or failure to exercise any right or power accruing upon any Event of Default, including Beneficiary requiring strict performance by Trustor of any undertakings, agreements, or covenants contained in this Trust Deed, shall impair any such right or power or shall be construed to be a waiver thereof, including the right to demand strict compliance and performance, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Any waiver by Beneficiary of any Event of Default under this Trust Deed shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Trustor under this Trust Deed, shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

11.8 **Successor Trustee**. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of the county wherein the Trust Estate is

located, a substitution of trustee. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

11.9 **Joint and Several Liability.** All obligations of Trustor under this Trust Deed, if more than one party, are joint and several as between them. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note secured by this Trust Deed.

11.10 **Acceptance of Trust.** Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

11.11 **Attorneys' Fees and Expenses.** Regardless of any breach or default, Trustor agrees to reimburse Beneficiary for all reasonable costs, attorney's fees, and out-of-pocket expenses actually incurred by Beneficiary, including but not limited to: (a) any bankruptcy or insolvency proceeding, or other action involving Trustor, the Trust Estate, this Trust Deed, or any guarantor as a debtor; (b) transportation and storage costs; (c) advertising of sale of the Trust Estate; (d) sale commissions; (e) sales tax; (f) costs for improving or repairing the Trust Estate; and (g) costs for preservation and protection of the Trust Estate, incurred by Beneficiary in obtaining possession of Trust Estate, storage and preparation for sale, sale or other disposition, and otherwise incurred in foreclosing upon the Trust Estate. Any and all such costs, fees, and out-of-pocket expenses shall be payable by Trustor upon demand, together with interest thereon from the date of the advance until repaid, both before and after judgment, at the rate provided in the Note.

11.12 **Request for Notice.** Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address for Trustor specified in this Trust Deed.

11.13 **Release.** In recognition of Beneficiary's right to have all its attorneys fees and expenses incurred in connection with this Trust Deed secured by the Trust Estate, notwithstanding payment in full of the Obligations secured by the Trust Estate, Beneficiary shall not be required to release, reconvey, or terminate any security interest or lien in or on the Trust Estate unless and until Trustor and all Guarantors have executed and delivered to Beneficiary general releases in form and substance satisfactory to Beneficiary.

11.14 **Limitation on Damages.** Beneficiary and its officers, directors, employees, representatives, agents, and attorneys, shall not be liable to Trustor or any Guarantor for consequential damages arising from or relating to any breach of contract, tort, or other wrong in connection with or relating to this Trust Deed or the Trust Estate.

11.15 **Preferential Transfers.** If the incurring of any debt by Trustor or the payment of any money or transfer of property to Beneficiary by or on behalf of Trustor or any Guarantor

should for any reason subsequently be determined to be “voidable” or “avoidable” in whole or in part within the meaning of any state or federal law (collectively “voidable transfers”), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Beneficiary is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Beneficiary’s counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys fees of Beneficiary related thereto, the liability of Trustor and Guarantor, and each of them, and this Trust Deed, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

11.16 **Survival.** All agreements, representations, warranties and covenants made by Trustor shall survive the execution and delivery of this Trust Deed, the filing and consummation of any bankruptcy proceedings, and shall continue in effect so long as any Obligation to Beneficiary contemplated by this Trust Deed is outstanding and unpaid, notwithstanding any termination of this Trust Deed. All agreements, representations, warranties and covenants in this Trust Deed shall run with the land, shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

11.17 **Accommodation Trustor.** Trustor and Borrower have significant common beneficial ownership. Given that relationship, Trustor acknowledges good and sufficient consideration for execution and delivery of this Trust Deed. Without limiting the foregoing, Trustor acknowledges that: (i) Beneficiary would have not advanced Loan proceeds to Borrower if Trustor had not executed and delivered this Trust Deed; (ii) Beneficiary accepted this Trust Deed as partial security for the Loan at the request of both Borrower and Trustor; (iii) Beneficiary shall have no obligation to investigate the credit standing or creditworthiness of Borrower; and (iv) Trustor has fully investigated the financial standing of Borrower and the adequacy of said collateral and will continue to keep itself fully apprised of the financial standing of Borrower and the adequacy of said collateral through the term of the Loan.

Trustor waives any right to require Beneficiary to: (i) proceed against Borrower; (ii) proceeds again or exhaust any security pledged to or held by Beneficiary from Borrower; or (iii) pursue any other remedy in Beneficiary’s power whatsoever. Trustor waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower, until the Loan has been paid in full, except for the performance of the Loan under the Trust Deed or upon the release of this instrument in accordance with the terms hereof. Trustor waives all rights it may now have or later acquire under any statute in derogation of the foregoing waivers.

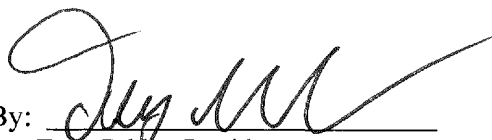
11.18 **Defined Terms.** Unless otherwise defined in this Trust Deed, capitalized terms used herein have the meanings given them in the Credit Agreement.

DATED: November 10, 2021.

TRUSTOR:

Fieldstone DB Cottage, LLC

By: Fieldstone Construction and Management Services, Inc

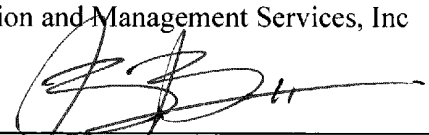
By: 
Troy Gabler, President

STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 10 day of November, 2021, by Troy Gabler, President of Fieldstone Construction and Management Services, Inc

My Commission Expires:

10-08-2024


NOTARY PUBLIC
Residing At: Lindon, UT

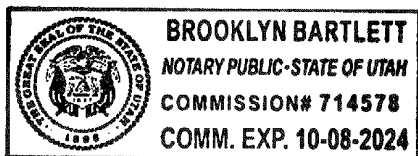


Exhibit "A"

Property Description

The land referred to is located in **Salt Lake** County, State of **Utah**, and is described as follows:

Lot 366 of that plat map entitled "DAYBREAK VILLAGE 11A PLAT 6 AMENDING LOTS Z101 OF THE VP DAYBREAK OPERATIONS-INVESTMENTS PLAT 1" recorded on June 29, 2021 as Entry No. 13703215, Book 2021P, Page 173 of the Official Records of Salt Lake County, Utah.

(26-22-451-015-0000)